

**OLYMPIC COAST
NATIONAL
MARINE
SANCTUARY
ADVISORY
COUNCIL**



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November 26, 2002

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U.S. Fish and Wildlife Service
U.S. Coast Guard*

*Artwork:
David
Sones*

Ms. Carol Bernthal
Superintendent
NOAA/Olympic Coast National Marine Sanctuary
138 W. First Street
Port Angeles, Washington 98362-2600

Dear Ms. Bernthal:

The Olympic Coast National Marine Sanctuary Advisory Council (SAC) would like to comment on the implementation of the Final Report "Fair Market Value Analysis for a Submarine Cable Permit in National Marine Sanctuaries" prepared for NOAA's National Marine Sanctuary Program.

The SAC consists of nineteen (19) members from non-governmental interests, governmental organizations and Indian Tribes. The membership on the SAC is as follows: Non-governmental; Citizen-at-Large, Education, Research, Conservation/Environmental, Chamber of Commerce/Tourism/Recreation, Marine Business/Ports/Industry, and Commercial Fishing. The Governmental positions are: U.S. Department of Interior-Olympic National Park, U.S. Fish and Wildlife Service, National Marine Fisheries Service, Washington State Department of Ecology, Washington State Department of Natural Resources, Washington State Department of Fish And

Wildlife and Local Government. The Hoh, Makah, and Quileute Tribes and the Quinault Indian Nation are also members of the SAC.

The SAC is committed to active support of the National Marine Sanctuary System in their mission to preserve and protect the unique resources found within the established national marine sanctuaries. The OCNMS SAC is supportive of education, resource protection and research activities and commercial endeavors that are compatible with the

Olympic Coast National Marine Sanctuary

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primary objectives as stated above. The SAC also acknowledges that policy actions must consider the impact on and uphold the treaty-protected rights of Indian Tribes. It is with these precepts in mind that we offer comments on assessing a fair market value fee for existing and future permits regarding placement of fiber optic cables, and general comments on the allocation of Special Use Permit fees.

- The general policy of the National Marine Sanctuary Program should be to discourage cables within national marine sanctuaries.

It is the SAC's contention that the installation of fiber optic cables is generally inconsistent with sanctuary regulations prohibiting activities that alter the seabed or that construct structures on the seabed, and should be strongly resisted.

- Even though the financial future for cable companies is uncertain and has led to bankruptcies and other financial hardships, , the SAC strongly recommends that companies be held liable for meeting permitting and financial obligations.
NOAA should require that a bond be posted prior to installation of future fiber optic cables
- Existing and future approved cable projects must meet environmental standards and should be charged a fair market value fee at a rate that reflects the unique value of the sanctuaries

The SAC notes the following statement in the Summary of the Report:

“The cost of allowing cables in sanctuaries includes the expense of environmental monitoring and certain non-market losses associated with intrusions in a protected areaWhile estimating the non-market losses difficult (*sic*), they are certainly greater than zero since many people would prefer to rout cables around sanctuaries whenever possible. Economic efficiency (as well as market value with respect to a willing seller) requires that this non-market value be included in the price of sanctuary access, putting a lower bound on the fair market fee ” (Fed. Reg. Vol. 67, no. 167, page 55202).

It is our view that this statement requires NOAA to develop a fee structure that incorporates these non-market values. It is impossible to tell whether the fee range adopted in the report does this. NOAA needs to be more explicit about how it arrived at these figures.

Should events evolve that dictate the installation of fiber optic cables in sanctuaries, permitting processes and standards should be rigorously followed and fair market fees assessed. The SAC strongly believes that the fee range of \$40,000 to \$100,000 derived from the comparable transaction analysis is far too low, especially if the non-market values described in the above paragraph are factored in. **However, if decision-makers do use the recommended range of values for fees, then the SAC believes it should**

use the upper-most figure of \$100,000. We believe this is appropriate based on the facts that sanctuaries 1) contain nationally significant resources, 2) are limited to less than 1% of U.S. waters, and 3) have unique management requirements associated with them.

The SAC also views it is NOAA's responsibility to address several other factors in setting and administering fees for fiber optic cables in sanctuaries.

- Given the range of figures specified in the fair market value report, NOAA should develop more specific criteria for determining values in individual cases, and provide public notice of final values for existing and future Special Use Permits.
- Fair market fees collected should be directed towards management at the specific sanctuary site granting the permit for installation of fiber optic cables and also to the benefit the national program as a whole.

In conclusion, the installation of fiber optic cables should generally **not** be permitted or encouraged in national marine sanctuaries. For existing cables and in the future should events occur that force the use of the sanctuary as a route, then a fair market value fee must be assessed at the highest per mile value based on comparable transactions in environmentally sensitive marine areas, and specifically include a public benefit amenity value reflective of the unique character of these areas. Finally, we urge NOAA to move forward with finalizing a national policy on the placement of fiber optic cables within national marine sanctuaries.

Thank you for the opportunity to comment on this issue and we respectfully request that you formally respond to our comments.

Sincerely,



Al Brooks
Sanctuary Advisory Council Chair